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CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 738

Introduced by Assembly Member Davis
(Coauthors: Assembly Members Firebaugh and Honda)
(Coauthors: Senators Baca and Ortiz)

February 24, 1999

An act to amend Sections 21532~~and 21605~~, 21605, and 22754 of, to add Sections 21545 and 21545.5 to, and to repeal Sections 21547 and 22811.6 of, the Government Code, relating to the Public Employees' Retirement System.

LEGISLATIVE COUNSEL'S DIGEST

AB 738, as amended, Davis. Public Employees' Retirement System: benefits.

The Public Employees' Retirement Law provides benefits for survivors of eligible members who die before service retirement.

This bill would provide benefits for survivors of eligible members who die before service retirement ~~and would~~, authorize *certain* persons presently receiving death benefits to elect to instead receive the new benefits, *and make related technical changes*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21532 of the Government Code
2 is amended to read:

3 21532. The basic death benefit is payable in all cases
4 where the retirement system is liable under Section 21530
5 for either the basic or a special death benefit and the
6 special death benefit is not payable.

7 The basic death benefit shall consist of:

8 (a) The accumulated contributions of the member.

9 (b) If the member is not an insured member, or is an
10 insured member eligible for service retirement or the
11 member is subject to benefits pursuant to Section 21545
12 ~~or 21547~~, an amount, provided from contributions by the
13 state, or a contracting agency, equal to one-twelfth of the
14 annual compensation earnable by the deceased during
15 the 12 months immediately preceding his or her death, or
16 the compensation earnable by the member at the time of
17 becoming eligible for benefits pursuant to Section 21160
18 if higher, multiplied by the number of completed years
19 of current service credited to the member, but not to
20 exceed one-half of the annual compensation. If the
21 member is an insured member who is ineligible for
22 service retirement and is also credited with service as a
23 local member only that service shall be used in computing
24 the amount under this subdivision and that amount shall
25 not be a part of the basic death benefit payable with
26 respect to the insured member.

27 (c) If the member is a state member, other than a
28 school member, who dies after becoming eligible for
29 retirement with more than five but less than six years
30 credited service, an amount equal to 50 percent of the
31 annual compensation earnable by the deceased member
32 during the 12 months immediately preceding his or her
33 death.

34 The basic death benefit for a member who dies under
35 the circumstances described in subparagraph (F) of
36 paragraph (1) of subdivision (a) of Section 21530 shall not
37 exceed an amount that, when added to the death benefit
38 paid for the member under the other system, equals the

1 maximum death benefit payable under that system, if the
2 death is not the result of injury or disease arising out of
3 and in the course of his or her employment under that
4 system. However, the benefit shall be at least equal to his
5 or her accumulated contributions. The basic death
6 benefit for the member shall be the amount of his or her
7 accumulated contributions if death is the result of disease
8 or injury arising out of and in the course of employment
9 under the other system.

10 SEC. 2. Section 21545 is added to the Government
11 Code, to read:

12 21545. Upon the death of a *state or local* member ~~who~~
13 ~~has earned~~ *whose service credit equals or exceeds* the
14 minimum years of service credit for service retirement
15 applicable to him or her ~~in his or her last employment~~
16 ~~preceding death, who dies in~~, *who dies in* circumstances
17 in which the basic death benefit is payable other than
18 solely upon the basis of membership in a county
19 retirement system, or a retirement system maintained by
20 the university, a monthly allowance shall be payable as
21 follows:

22 (a) To the member's surviving spouse, an amount
23 equal to what the member would have received if he or
24 she had retired for disability pursuant to Section 21423 ~~or~~
25 ~~21424, 21424, or 21427~~ on the date of death and had
26 elected Optional Settlement 2 and Section 21459. As used
27 in this section, a "surviving spouse" means a spouse who
28 was married to the member for at least one year prior to
29 his or her death.

30 (b) To the children under age 18 collectively if there
31 is no qualifying surviving spouse or the spouse dies before
32 all of the children of the deceased member are age 18, an
33 amount equal to one-half of and derived from the same
34 source as the disability unmodified allowance pursuant to
35 Section 21423 ~~or 21424 which~~, *21424, or 21427* that the
36 member would have been entitled to receive if he or she
37 had retired for disability on the date of death. No child
38 shall receive any allowance after marrying or attaining
39 the age of 18. As used in this section, a "surviving child"
40 includes a posthumously born child of the member.

1 Where a member does not have a surviving spouse or
2 any children under the age of 18 years at the time of
3 death, no allowance shall be payable under this section.

4 No allowance shall be payable under this section if a
5 special death benefit is payable.

6 The allowance provided by this section shall be paid in
7 lieu of the basic death benefit but a surviving spouse
8 qualifying for the allowance may elect, before the first
9 payment on account of it, to receive the basic death
10 benefit in lieu of the allowance.

11 The allowance provided by this section shall be paid in
12 lieu of the basic death benefit but the guardian of the
13 minor child or children qualifying for the allowance may
14 elect, before the first payment on account of it, to receive
15 the basic death benefit in lieu of the allowance. If an
16 election of the basic death benefit is made, the basic death
17 benefit shall be paid to all of the member's surviving
18 children, regardless of age or marital status, in equal
19 shares.

20 If the member was eligible for service retirement at the
21 time of death, a surviving spouse may, instead of electing
22 the allowance provided by this section, elect to receive an
23 allowance pursuant to Section 21548 or the guardian of a
24 minor child may instead elect to receive an allowance
25 pursuant to Section 21546.

26 If the total of the payments made are less than the basic
27 death benefit that was otherwise payable on account of
28 the member's death, the amount of the basic death
29 benefit less any payments made pursuant to this section
30 shall be paid in a lump sum as follows:

31 (1) Upon the death of the spouse or minor child, to the
32 surviving children of the member, share and share alike.
33 Or, if there are no surviving children, to the estate of the
34 person last entitled to the allowance.

35 (2) Upon the attainment of age 18 or marriage of the
36 youngest child, to the surviving children of the member
37 share and share alike.

38 ~~The board shall compute the amount by which benefits~~
39 ~~paid pursuant to this section exceed the benefits that~~
40 ~~would otherwise be payable and shall charge any excess~~

~~1 against the contributions of the state so that there shall be~~
~~2 no increase in contributions of members by reason of~~
~~3 benefits paid pursuant to the section.~~

4 The allowance provided by this section shall apply with
5 respect to state *or local* members whose death occurs on
6 or after January 1, 2000.

7 This section shall not apply to any contracting agency,
8 unless and until the agency elects to be subject to this
9 section by amendment to its contract made in the
10 manner prescribed for approval of contracts, or in the
11 case of contracts made after the date this section becomes
12 operative, by express provision in the contract making
13 the contracting agency subject to this section.

14 SEC. 3. Section 21545.5 is added to the Government
15 Code, to read:

16 21545.5. If an alternate death benefit, *provided*
17 *pursuant to Section 21547 as it read prior to January 1,*
18 *2000,* is being received on January 1, 2000, by the spouse
19 or children of a state member who would have been
20 eligible to receive benefits under Section 21545 if the
21 death had occurred on ~~and~~ *or* after January 1, 2000, the
22 person receiving that benefit may, on and after January
23 1, 2000, elect to instead receive benefits under Section
24 21545. The amount of the benefits shall not be payable for
25 the period between the date of the member's death and
26 the effective date of election to receive benefits under
27 this section. ~~The board has no duty to identify, locate, or~~
28 ~~notify any person of eligibility to receive benefits under~~
29 ~~this section.~~ *shall promptly identify, locate, and notify all*
30 *persons receiving that benefit of their right to make the*
31 *election as provided in this section.*

32 SEC. 4. Section 21547 of the Government Code is
33 repealed.

34 SEC. 5. Section 21605 of the Government Code is
35 amended to read:

36 21605. The insurance benefit shall be the sum of the
37 following amounts:

38 (a) Five thousand dollars (\$5,000).

39 (b) An amount equal to 50 percent of the annual
40 compensation earnable by the deceased member during

1 the 12 months immediately preceding his or her death or
2 the compensation earnable by the member at the time of
3 becoming eligible for benefits pursuant to Section 21160
4 if higher, or if a member also has state service in an
5 employment in which employees are ineligible to be
6 insured members, a proportionate part of that amount in
7 the ratio of eligible service to total service. No amount
8 shall be paid under this subdivision if the member is
9 eligible for service retirement or the member is subject
10 to benefits pursuant to Section 21545 or 21547.

11 If this section is in conflict with the provisions of a
12 memorandum of understanding reached pursuant to
13 Section 3517.5, the memorandum of understanding shall
14 be controlling without further legislative action, except
15 that if the provisions of a memorandum of understanding
16 require the expenditure of funds, the provisions shall not
17 become effective unless approved by the Legislature in
18 the annual Budget Act.

19 SEC. 6. *Section 22754 of the Government Code is*
20 *amended to read:*

21 22754. As used in this part the following definitions,
22 unless the context otherwise requires, shall govern the
23 interpretation of terms:

24 (a) "Board" means the Board of Administration of the
25 Public Employees' Retirement System.

26 (b) "Employee" means:

27 (1) Any officer or employee of the State of California
28 or of any agency, department, authority, or
29 instrumentality of the state including the University of
30 California, or any officer or employee who is a local or
31 school member of the Public Employees' Retirement
32 System employed by a contracting agency that has
33 elected to be or otherwise has become subject to this part,
34 or who is a member or retirant of the State Teachers'
35 Retirement System employed by an employer who has
36 elected to become subject to this part, or who is an
37 employee or annuitant of a special district or county
38 subject to the County Employees Retirement Law of 1937
39 (Chapter 3 (commencing with Section 31450) of Part 3 of
40 Division 4 of Title 3) that has elected to become subject

1 to this part, or who is an employee or annuitant of a
2 special district, as defined in subdivision (i), that has
3 elected to become subject to this part, except persons
4 employed on an intermittent, irregular or less than
5 half-time basis, or employees similarly situated, or
6 employees in respect to whom contributions by the state
7 for any type of plan or program offering prepaid hospital
8 and medical care are otherwise authorized by law.

9 (2) Any officer or employee who participates in the
10 retirement system of a contracting agency as defined in
11 paragraph (2) of subdivision (g) that has elected to
12 become subject to this part, except persons employed less
13 than half time or who are otherwise determined to be
14 ineligible.

15 (3) Any annuitant of the Public Employees'
16 Retirement System employed by a contracting agency as
17 defined in subdivision (g) that has elected to become
18 subject to this part who is a person retired under Section
19 21228.

20 (4) Notwithstanding paragraph (1), "eligible
21 employee" of the State of California, as it applies to state
22 employees in State Bargaining Unit 8 or 16, means (A) a
23 permanent employee appointed half time or more; (B)
24 an employee who is a limited term or temporary
25 authorization appointee who continues coverage based
26 on prior continuous permanent status; (C) an employee
27 who is in a half time or more limited-term appointment
28 shall qualify after working six consecutive months; and
29 (D) an employee appointed half time or more to a
30 temporary appointment in lieu of a permanent
31 appointment; and (E) a permanent intermittent
32 employee who works a minimum of 480 hours in a
33 six-month control period. All other limited-term,
34 nonstatus employees as defined by the Department of
35 Personnel Administration and temporary authorization
36 employees are not eligible.

37 (c) "Carrier" means a private insurance company
38 holding a valid outstanding certificate of authority from
39 the Insurance Commissioner of the state, a medical
40 society or other medical group, a nonprofit hospital

1 service plan qualifying under Chapter 11A (commencing
2 with Section 11491) of Part 2 of Division 2 of the Insurance
3 Code, or nonprofit membership corporation lawfully
4 operating under Section 9200 or Section 9201 of the
5 Corporations Code, or a health care service plan as
6 defined under subdivision (f) of Section 1345 of the
7 Health and Safety Code, or a health maintenance
8 organization approved under Title XIII of the federal
9 Public Health Services Act, ~~which~~ *that* is lawfully
10 engaged in providing, arranging, paying for, or
11 reimbursing the cost of personal health services under
12 insurance policies or contracts, medical and hospital
13 service agreements, membership contracts, or the like, in
14 consideration of premiums or other periodic charges
15 payable to it.

16 (d) “Health benefits plan” means any program or
17 entity that provides, arranges, pays for, or reimburses the
18 cost of health benefits.

19 (e) “Annuitant” means:

20 (1) Any person who has retired within 120 days of
21 separation from employment and who receives any
22 retirement allowance under any state or University of
23 California retirement system to which the state was a
24 contributing party.

25 (2) A family member receiving an allowance as the
26 survivor of an annuitant who has retired as provided in
27 paragraph (1), or as the survivor of a deceased employee
28 under Section 21541, 21545, or 21546, ~~or 21571~~ or similar
29 provisions of any other state retirement system.

30 (3) Any employee who has retired under the
31 retirement system provided by a contracting agency as
32 defined in paragraph (2) of subdivision (g) and who
33 receives a retirement allowance from that retirement
34 system, or a surviving family member who receives the
35 retirement allowance in place of the deceased.

36 (4) Any person who was a state member for 30 years
37 or more and who, at the time of retirement, was a local
38 member employed by a contracting agency.

39 (f) (1) “Family member” means an employee’s or
40 annuitant’s spouse and any unmarried child (including an

1 adopted child, a stepchild, or recognized natural child
2 who lives with the employee or annuitant in a regular
3 parent-child relationship). The board shall, by regulation,
4 prescribe age limits and other conditions and limitations
5 pertaining to unmarried children.

6 (2) Notwithstanding paragraph (1), this paragraph
7 shall apply only to state employees, as defined in Section
8 19815, that are in State Bargaining Unit 5. “Family
9 member” only means an employee’s legal spouse and any
10 unmarried child, adopted child, stepchild, recognized
11 natural child, or legal ward living with the employee in
12 a regular parent-child relationship.

13 (g) “Contracting agency” means:

14 (1) Any contracting agency as defined in Section
15 20022, any county or special district subject to the County
16 Employees Retirement Law of 1937 (Chapter 3
17 commencing with Section 31450) of Part 3 of Division 4
18 of Title 3), and any special district, school district, county
19 board of education, personnel commission of a school
20 district or a county superintendent of schools.

21 (2) Any public body or agency of, or within California
22 not covered by the Public Employees’ Retirement
23 System or subject to the County Employees Retirement
24 Law of 1937 (Chapter 3 (commencing with Section
25 31450) of Part 3 of Division 4 of Title 3), ~~which~~ *that*
26 provides a retirement system for its employees funded
27 wholly or in part by public funds.

28 (h) “Employer” means the state, any contracting
29 agency employing an employee, and any agency ~~which~~
30 *that* has elected to become subject to this part pursuant
31 to Section 22856.

32 (i) “Special district” means a nonprofit, self-governed
33 public agency, within the State of California and
34 comprised solely of public employees, performing a
35 governmental rather than proprietary function.

36 SEC. 7. Section 22811.6 of the Government Code is
37 repealed.